

# Virginia Administrative Code

Database updated through 21:11 V.A.R. February 7, 2005

11VAC 5-20-200. Procurement in general.

- A. ~~To promote the free enterprise system in Virginia, the~~ The State Lottery Department will purchase goods or services in accordance with procedures contained in The Virginia Lottery Purchasing Manual. ~~by using competitive methods whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.~~
- B. ~~The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.~~
- C. ~~When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities," published by the Department of General Services, Division of Purchases and Supply.~~

~~11VAC 5-20-210. Exemption and restrictions.~~

- A. ~~Purchase of goods of \$2,000 or less shall be exempted from competitive procurement procedures. Purchase of services of \$5,000 or less shall be exempted from competitive procurement procedures. Specific purchases of goods of more than \$2,000 and services of more than \$5,000 may be exempted from the competitive procurement procedures when the director determines in writing that the best interests of the department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.~~
- B. ~~All purchases shall be made in compliance with the standards of ethics in 11VAC 5-20-420 of this chapter.~~
- C. ~~The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.~~
- D. ~~It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.~~
- E. ~~Whenever a purchase is exempt from competitive procurement procedures under this chapter, except purchases of \$2,000 or less, the contracting officer is obliged to make a~~

~~written determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions.~~

~~11VAC 5-20-220. Requests for Information.~~

- ~~A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.~~
- ~~B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.~~
- ~~C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.
  - ~~1. Additional RFI's may be published for a good or a service, as determined on a case-by-case basis.~~
  - ~~2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.~~~~
- ~~D. All costs of developing and presenting the information furnished will be paid for by the vendor.~~
- ~~E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by §11-52-D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.~~
- ~~F. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.~~

~~11VAC 5-20-230. Requests for Proposals.~~

- ~~A. A written Request for Proposals (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.~~
- ~~B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.~~
- ~~C. The department shall publish or post a public notice of the RFP.~~

- ~~1. All solicitations shall be posted for not less than five working days on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.~~
  - ~~2. The department shall decide the method of giving public notice on a case by case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.~~
- ~~D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.~~
- ~~E. The department will evaluate each vendor proposal.~~
- ~~1. The evaluation will consider the vendor's response to the factors in the RFP.~~
  - ~~2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.~~
- ~~F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.~~
- ~~G. Award of RFP contract.~~
- ~~1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.~~
  - ~~2. Price will be considered but is not necessarily the determining factor.~~
  - ~~3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.~~

#### ~~HIVAC 5-20-240. Invitations for Bids.~~

- ~~A. A written Invitation for Bids (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.~~
- ~~B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.~~

~~1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.~~

~~2. It may contain other optional data.~~

~~C. Public notice of the IFB shall be given.~~

~~1. The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted for not less than five working days at the department's headquarters in a public area used to post purchase notices, and shall be given to any other interested vendor.~~

~~2. The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.~~

~~D. Bids shall be received until the date and time set forth in the IFB. Late bids shall not be considered.~~

~~E. The IFB may provide that bids shall be publicly opened. If bids are publicly opened, the following items shall be read aloud:~~

~~1. Name of bidder;~~

~~2. Unit or lot price, as applicable; and~~

~~3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.~~

~~F. The department shall evaluate each vendor bid.~~

~~1. The evaluation shall consider whether the bid responds to the factors in the IFB.~~

~~2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.~~

~~3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.~~

~~G. The department shall award the contract to the lowest responsive and responsible bidder.~~

~~11VAC 5-20-250. Sole source procurements.~~

~~A. A sole source procurement shall be made when there is only one source practicably available for goods or services. Because there is only one source practicably available, a~~

~~sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.~~

- ~~B. For a sole source procurement of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods or services procured, the date of the procurement and factors leading to the determination of sole source.~~
- ~~C. For a sole source procurement greater than \$15,000, on the day the director awards the procurement, he will post for not less than five working days a written statement in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors leading to the determination of sole source, and the date of the procurement.~~

~~11VAC 5-20-260. Emergency purchase procurement.~~

- ~~A. An emergency purchase procurement shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.~~
- ~~B. For an emergency purchase of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date of the procurement and factors leading to a determination of the emergency purchase.~~
- ~~C. For an emergency purchase greater than \$15,000, on the day the director awards the procurement, a written statement shall be posted for not less than five working days in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase.~~

~~11VAC 5-20-270. Procedures for small purchases.~~

- ~~A. Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$15,000.~~
- ~~B. Price quotations may be obtained through oral quotations in person or by telephone without the use of an RFI, RFP or IFB.~~
- ~~C. If the contract is \$2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$2,000.~~

~~D. Except in the case of an emergency under 11VAC 5-20-260 or for purchases of goods of \$2,000 or less or services of \$5,000 or less, the department will attempt to obtain at least three quotations.~~

~~E. In letting small purchase contracts, the department may consider factors in addition to price.~~

~~11VAC 5-20-280. Procurement of nonprofessional services.~~

~~A. Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.~~

~~B. Nonprofessional services may be procured through noncompetitive negotiations under the following conditions:~~

~~1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.~~

~~2. When a written determination is made and approved by the director that there is only one adequately qualified expert or source practicably available for the services to be procured.~~

~~11VAC 5-20-290. Procurement of professional services.~~

~~A. Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services should be made on the basis of qualifications, resources, experience and the cost involved.~~

~~B. Professional services may be procured through noncompetitive negotiations under the following conditions:~~

~~1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.~~

~~2. When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.~~

~~C. Professional services procurement by competitive negotiation shall be in accordance with 11VAC 5-20-300.~~

~~11VAC 5-20-300. Guidelines for competitive procurement of professional services.~~

- ~~A. In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs and methods to be utilized in arriving at a price for the services.~~
- ~~B. At the request of an offeror, properly marked, proprietary information shall not be disclosed to the public or to competitors.~~
- ~~C. At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are deemed to meet best the department's procurement needs.~~
- ~~D. Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.~~
- ~~E. If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under consideration, a purchase may be negotiated and awarded to that offeror.~~
- ~~F. The department must ensure that all points negotiated are properly documented and become a part of the procurement file.~~
- ~~G. The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.~~
- ~~H. A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures.~~

~~11VAC 5-20-310. Time to submit and accept Requests for Information (RFP), Requests for Proposals (RFP), or Invitations for Bids (IFB).~~

- ~~A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.~~

- ~~1. All vendors shall take responsibility for their chosen method of delivery to the department.~~
  - ~~2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.~~
  - ~~3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.~~
  - ~~4. All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.~~
- ~~B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45 day time period. The department may require a longer or shorter period for specific goods or services.~~

~~11VAC 5-20-320. Questions on bids.~~

~~Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.~~

~~11VAC 5-20-330. How to modify or withdraw proposals or bids.~~

- ~~A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.~~
- ~~B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.~~
  - ~~1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.~~
  - ~~2. A proposal or bid may be withdrawn after opening if the department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.~~

~~C. A vendor may not modify a proposal or bid after the purchase award is made.~~

~~11VAC 5-20-340. Rejection of bids.~~

~~The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department.~~

~~11VAC 5-20-350. Testing of product.~~

~~Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.~~

~~11VAC 5-20-360. Proposal bid or performance security.~~

~~A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.~~

~~1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.~~

~~2. When required, security will not be waived, except upon action by the director.~~

~~B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.~~

~~11VAC 5-20-370. Assignment of contracts.~~

~~A vendor may not assign any contract to another party without permission of the director.~~

~~11VAC 5-20-380. Strikes, lockouts or acts of God.~~

~~Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.~~

~~11VAC 5-20-390. Remedies for the department on goods and services which do not meet the contract.~~

~~A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.~~

~~B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between~~

~~the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law.~~

~~11VAC 5-20-400. Administration of contracts.~~

- ~~A. The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.~~
- ~~B. The department shall keep all records relating to a contract for three years after the end of a contract.
  - ~~1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.~~
  - ~~2. Records shall be open to the public except for proprietary information for which protection has been properly requested.~~~~
- ~~C. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.
  - ~~1. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.~~
  - ~~2. Modifications shall require the signature of the director or the signature of the designee granted authority to sign for the amount amended, except a contract may be modified for payment purposes by an amount not to exceed 10% of the total contract without a written change order or amendment. In no event shall a contract be modified for an amount of \$10,000 or 25%, whichever is greater, individually or cumulatively without approval and signature of the director. Modifications shall be effected by issuance of a letter in the form of a change order or amendment to the original agreement issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract.~~~~
- ~~D. The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in 11VAC 5-20-390 A and B.~~
- ~~E. The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.~~
- ~~F. The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.~~

- ~~1. In rejecting goods or services, the department will notify the vendor as soon as possible.~~
  - ~~2. The department will state the reasons for rejecting the goods or services and request prompt replacement.~~
  - ~~3. Replacement goods or services shall be made available at a date acceptable to the department.~~
- ~~G. The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.~~
- ~~H. To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Article 2.1 (§11-62.1 et seq.) of Chapter 7 of Title 11 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.~~
- ~~I. Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.~~
- ~~J. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.~~
- ~~1. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.~~
  - ~~2. If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.~~

~~3. Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with §2.1-127 of the Code of Virginia.~~

~~11VAC 5-20-410. Vendor background.~~

~~A. A vendor shall allow the department to check his background. The background check may extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.~~

~~B. Before contracting with the department, the department may require a vendor to sign an agreement with the department to allow a criminal investigation of the entities and persons named in subsection A of this section.~~

~~C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.~~

~~11VAC 5-20-420. Ethics in contracting.~~

~~A. The department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Article 6 (§2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, and will be subject to the provisions of the State and Local Government Conflict of Interests Act (§2.2-3100 et seq. of the Code of Virginia).~~

~~B. Any contract which violates the contracting ethics in the Code of Virginia may be voided and rescinded immediately by the department.~~

~~11VAC 5-20-430. Preference for Virginia products and firms.~~

~~A. In the case of a tie bid or proposal, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.~~

~~B. Whenever any bidder or offeror is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or offeror who is a resident of Virginia.~~

Part V

## ~~Procurement Appeals And Disputes~~

~~11VAC 5-20-440. Generally.~~

~~The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this chapter applies to all vendors. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this chapter. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.~~

~~11VAC 5-20-450. Appeals, protests, time frames and remedies related to solicitation and award of contracts.~~

~~A. If a vendor is considered ineligible or disqualified, the vendor may appeal the department's decision.~~

~~1. The written appeal shall be filed within 10 days after the vendor receives the department's decision.~~

~~2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.~~

~~B. If a vendor is not allowed to withdraw a bid in certain circumstances, the vendor may appeal the department's decision.~~

~~1. The written appeal shall be filed within 10 days after the vendor receives the department's decision.~~

~~2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.~~

~~a. The certified check shall be payable to the State Lottery Department.~~

~~b. The cash bond shall name the State Lottery Department as obligor.~~

~~c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.~~

~~d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.~~

- ~~3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.~~
- ~~C. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract.~~
- ~~1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.~~
  - ~~2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.~~
  - ~~3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D of this section.~~
  - ~~4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.~~
- ~~D. Any vendor or potential vendor may protest the award or the department's decision to award a contract.~~
- ~~1. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.~~
  - ~~2. If the protest depends upon information contained in public records pertaining to the purchase, then a 10-day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.~~
  - ~~3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.~~
  - ~~4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.~~
  - ~~5. No protest shall delay the award of a contract.~~
  - ~~6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the~~

~~director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.~~

~~11VAC 5-20-460. Appeals, time frames and remedies related to contract disputes and claims.~~

~~A. In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.~~

~~B. Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.~~

~~1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.~~

~~2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.~~

~~3. Nothing in this chapter shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.~~

~~4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.~~

~~5. The director's decision will state the reasons for the action.~~

~~C. Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.~~

~~11VAC 5-20-470. Form and content of appeal to the director.~~

~~A. The vendor shall make the appeal to the director in writing. The appeal shall be mailed or hand-delivered to the State Lottery Director at the headquarters of the State Lottery Department.~~

~~B. The appeal shall state the:~~

~~1. Decision of the department which is being appealed;~~

~~2. Basis for the appeal;~~

~~3. Contract number;~~

~~4. Other information which identifies the contract; and~~

~~5. Reasons for the action.~~

~~C. The director's decision on an appeal will be sent to the vendor by certified mail, return receipt requested.~~

~~1. The director shall follow the time limits in this chapter and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.~~

~~2. The director's decision will state the reasons for the action.~~

~~11VAC 5-20-480. State Lottery Department appeal hearing procedures.~~

~~A. The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.~~

~~1. The Administrative Process Act does not apply to the hearings.~~

~~2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.~~

~~3. Legal counsel may represent the vendor or the department. Counsel is not required.~~

~~4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.~~

~~5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.~~

~~6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.~~

~~7. The director may ask questions at any time. The director may not question the vendor in closed session.~~

~~B. Hearings shall be open to the public.~~

~~1. The director may adjourn the public hearing to discuss and reach his decision in private.~~

~~2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.~~

~~3. A court reporter may be used. The court reporter shall be paid by the person who requested him.~~

~~a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.~~

~~b. The transcript shall become part of the department's records.~~

~~C. Unless the director determines otherwise, hearings will be in the following order:~~

~~1. The vendor will explain his reasons for appealing and the desired relief.~~

~~2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.~~

~~3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.~~

~~4. After all evidence has been presented, the director shall reach his decision in private.~~

~~11VAC 5-20-490. Notice, time and place of hearings.~~

~~A. All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.~~

~~1. Appeals may be heard sooner if everyone agrees.~~

~~2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.~~

~~B. All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.~~

~~11VAC 5-20-500. Who may take part in the appeal hearing.~~

~~A. The director may request specific people to take part in the hearing.~~

~~B. The protesting vendor and the department shall participate in hearings on ineligibility, disqualification, responsibility, or denial of a request to withdraw a bid.~~

~~C. The protesting vendor and the department shall participate in hearings on claims or disputes.~~

~~11VAC 5-20-510. Director's decision.~~

- A. ~~The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.~~
- B. ~~For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.~~
- C. ~~Format of decision shall include:
  - 1. ~~The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."~~
  - 2. ~~The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.~~
  - 3. ~~The decision will be signed by the director.~~~~
- D. ~~Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.~~

~~11VAC 5-20-520. Appeal to courts.~~

- A. ~~The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.~~
- B. ~~Nothing in this chapter shall prevent the director from taking legal action against a vendor.~~